

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs at Knoxville January 24, 2006

**STATE OF TENNESSEE v. SANTOS MACARENA**

**Appeal from the Circuit Court for Rutherford County**  
**No. F-55459     Don R. Ash, Judge**

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**No. M2005-01905-CCA-R3-CO - Filed June 27, 2006**

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The defendant, Santos Macarena, pled guilty in the Rutherford County Circuit Court to one count of possession with the intent to deliver more than 300 grams of cocaine, a Class A felony, and the trial court sentenced him in an amended judgment of conviction to serve fifteen years as a Range I, standard offender in the Department of Correction. The defendant's amended judgment of conviction states that the defendant "agrees to waive any and all appeal &/or post conviction relief issues." The defendant, pro se, appeals his conviction, claiming that the state improperly pursued his case, that the state ignored a third-party confession, that the trial court erred in failing to suppress the evidence, and that his attorney's performance was constitutionally deficient. We conclude the trial court lacked jurisdiction to enter an amended judgment of conviction, and we remand the case to the trial court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated;  
Case Remanded**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Santos Macarena, Tiptonville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Leslie Price, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Jennings H. Jones, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case relates to the defendant's being found in possession of a large quantity of cocaine during a traffic stop. The defendant filed a motion to suppress the cocaine which the trial court denied. Thereafter, on December 10, 2004, the defendant pled guilty and received an agreed sentence of eighteen years in the Department of Correction, reserving a certified question of law for appeal relating to the seizure of the cocaine. On January 15, 2005, the defendant filed a "motion for

correction or reduction of sentence or post conviction relief,” which he amended on June 22, 2005. The hearing transcript reflects that on June 28, 2005, the defendant agreed to a reduction in sentence of three years in exchange for waiving his right to appeal the dispositive question of law and his right to any post-conviction relief. As part of his agreement, the defendant executed a document entitled “Waiver,” which provides, as follows:

Comes now the Defendant, SANTOS MACARENA, after being duly sworn and states as follows:

. . . .

2. That on January 15, 2005, I filed a MOTION FOR CORRECTION OR REDUCTION OF SENTENCE OR POST CONVICTION RELIEF.
3. That on June 22, 2005 the aforesaid MOTION FOR CORRECTION OR REDUCTION OF SENTENCE OR POST CONVICTION RELIEF was amended to include new allegations.
4. That based upon the allegations made in the amendment dated June 22, 2005, I could and more than likely, would, receive a new trial.
5. That the new trial would include all prior rulings which included a denial of the Motion to Suppress evidence and as a result, cocaine seized during the search of the vehicle operated by me on March 10, 2004, would be admitted.
6. That any appeal in this matter would not occur until after the new trial and if I am convicted, appropriate sentencing.
7. That understanding these things, I now desire to waive (give-up) the hearing on my MOTION FOR CORRECTION OR REDUCTION OF SENTENCE OR POST CONVICTION RELIEF upon the State’s recommendation that my sentence in the above-styled

cause be reduced by fifteen (15) years<sup>1</sup> as a standard range I offender to be served at thirty (30) percent and the Court's acceptance of said recommendation.

8. That I further waive my right to appeal any further issues arising from matters arising prior to June 27, 2005.

(Emphasis added).

On June 27, 2005, the trial court conducted a second guilty plea hearing. At the hearing, the state outlined the terms of the agreement:

Your Honor, [the defendant's attorney] . . . has worked out a waiver whereby [the defendant] is asking that his motion for correction or reduction of sentence and his motion for post conviction relief be withdrawn. As part of that agreement, Your Honor, the State will be submitting an amended judgment form whereby the defendant would be receiving a 15 year sentence as opposed to the original sentence that was agreed upon of 18 years.

(Emphasis added).

The defendant admitted to the trial court that he was not coerced into entering the agreement to waive his post-conviction relief and direct appeal in exchange for a sentence reduction. The defendant, however, inquired of the trial court why his lawyer in the first case did not file an appeal. The trial court stated it did not know the answer but cautioned that if it accepted the agreement, "there will be no appeal." The defendant repeated his desire to proceed with the agreement, and the trial court executed an amended judgment of conviction pursuant to the terms of the agreement.

On July 26, 2005, the defendant filed a notice of appeal from his June 28, 2005 amended judgment of conviction. On appeal, the defendant contends that the state improperly pursued his case, that the state ignored a third-party confession, that the trial court erred in failing to suppress the evidence, and that he received the ineffective assistance of counsel. The state contends the defendant has waived his right to appeal and to post-conviction relief pursuant to the agreement.

We conclude that the trial court was without jurisdiction to amend the defendant's judgment of conviction. A trial court's judgment, as a general rule, becomes final thirty days after its entry unless a timely notice of appeal or a specified post-trial motion is filed. See State v. Pendergrass,

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<sup>1</sup>We note that a reduction of the defendant's sentence by fifteen years would have yielded a sentence of three years' incarceration. We also note that the judgment of conviction and the transcript of the defendant's amended guilty plea hearing reflect a sentence reduced to fifteen years.

937 S.W.2d 834, 837 (Tenn. 1996). Rule 35 of the Tennessee Rules of Criminal Procedure provides, “The trial court may reduce a sentence upon application filed within 120 days after the date the sentence is imposed or probation is revoked. No extensions shall be allowed on the time limitation. No other actions shall toll the running of this time limitation.” When the defendant withdrew his motion for correction or reduction of sentence or post-conviction relief, the trial court no longer had jurisdiction to amend the defendant’s December 10, 2004 judgment of conviction. In order to give effect to the agreement of the parties and amend the judgment, the trial court needed to grant the defendant’s motion for correction or reduction of sentence. See Tenn. R. Crim. P. 35.

Once a judgment becomes final or a notice of appeal is filed, the trial court loses jurisdiction and, generally, it retains no power to amend the judgment. Id.; State v. Moore, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991). A judgment beyond the court’s jurisdiction is void. Pendergrass, 937 S.W.2d at 837. Additionally, “jurisdiction to modify a final judgment cannot be grounded upon waiver or agreement by the parties.” Moore, 814 S.W.2d at 382. In this case the trial court lost jurisdiction because the defendant waived or “gave-up” the hearing on his motion and the thirty days had passed, making the judgment final.

As for the view that the defendant’s case is a post-conviction case, we note that in State v. Boyd, 51 S.W.3d 206 (Tenn. Crim. App. 2000), this court addressed a similar situation. The defendant filed a petition for post-conviction relief alleging that his trial counsel was ineffective for failing to preserve certified questions of law and that he would not have pled guilty had he known that he could not appeal the certified questions. The trial court and prosecutor agreed that the defendant was entitled to post-conviction relief. Instead of setting aside the defendant’s conviction, the parties agreed the defendant should be granted a delayed appeal. The trial court entered an “Agreed Final Judgment Granting Delayed Appeal,” which modified the original judgment of conviction by explicitly reserving certified questions of law which would have been dispositive and then granted a delayed appeal on those issues. This court concluded that the trial court did not have jurisdiction to amend the judgment because it lost jurisdiction when the defendant filed his original notice of appeal and that any attempt to amend the judgment was void, despite agreement by the state and defendant. Boyd, 51 S.W.3d at 210.

This court determined that

While a delayed appeal is not the correct procedure, relief is available in the post-conviction process. If a trial court finds that a defendant’s trial counsel’s performance was deficient for failing to properly reserve certified questions of law and that but for counsel’s assurance that he or she would be able to appeal certain dispositive questions of law, the defendant would not have pleaded guilty, the trial court may vacate the judgment of conviction and allow the defendant to withdraw the guilty plea. The parties are then placed back in the position they occupied prior to the guilty plea. Should the defendant and the State again agree to a guilty plea . . . they could re-enter into

such a plea agreement, and the trial court could conduct another plea hearing and enter a new judgment of conviction[.]

Id. at 211-12 (citations omitted); see also T.C.A. § 40-30-111(a). In the present case, the dismissal of the post-conviction case left the trial court without jurisdiction to act in the case. Therefore, we vacate the amended judgment of the trial court, reinstate the defendant's motion for correction or reduction of sentence or post-conviction relief, and remand this case to the trial court for further proceedings.

### **CONCLUSION**

Based upon the foregoing and the record as a whole, we vacate the amended judgment of the trial court and remand this case for further proceedings consistent with this opinion.

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JOSEPH M. TIPTON, JUDGE